

benefits and Social Security Administration (SSA) age-related retirement benefits without appropriate offset for the period September 1, 2014 through May 25, 2019; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether it properly required recovery of the overpayment by deducting \$200.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On February 27, 2014 appellant, then a 65-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she sustained neck, lumbar, bilateral shoulder, bilateral elbow, and right foot/toe conditions due to her repetitive employment duties. She noted that she first became aware of her claimed conditions and realized their relation to her federal employment on February 6, 2014. On July 28, 2014 OWCP accepted the claim for cervical and lumbar or lumbosacral intervertebral disc degeneration, right lateral epicondylitis, right upper arm osteoarthritis, other affectations of the bilateral shoulder region not otherwise classified, right bunion, right hallux valgus, right ankle/foot osteoarthritis, bilateral shoulder and upper arm sprain, cervical intervertebral disc displacement without myelopathy, lumbar spinal stenosis, and right lower leg osteoarthritis. OWCP paid appellant wage-loss compensation on the supplemental rolls from October 2, 2014 through April 4, 2015 and on the periodic rolls beginning April 5, 2015.

On EN1032 forms dated September 24, 2015, September 29, 2016, November 27, 2017, and September 17, 2018 appellant indicated that she received SSA age-related retirement benefits as part of an annuity for federal service.

On March 14, 2019 OWCP provided SSA with a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form. On April 10, 2019 SSA completed the dual benefits calculation form, which indicated appellant's SSA benefit rates with FERS offset and without FERS offset from September 2014 through December 2018. Beginning September 2014, the SSA rate with FERS was \$1,235.30 and without FERS was \$70.10. Beginning December 2014, the SSA rate with FERS was \$1,256.30 and without FERS was \$71.20. Beginning December 2015, the SSA rate with FERS was \$1,291.10 and without FERS was \$71.20. Beginning December 2016, the SSA rate with FERS was \$1,294.40 and without FERS was \$71.40. Beginning December 2017, the SSA rate with FERS was \$1,320.70 and without FERS was \$72.80. Beginning December 2018, the SSA rate with FERS was \$1,357.60 and without FERS was \$74.80.

In a FERS offset calculation sheet dated May 23, 2019, OWCP calculated that from September 1 through November 30, 2014 appellant received an overpayment in the amount \$3,495.60, from December 1, 2014 through November 30, 2015 appellant received an overpayment in the amount of \$14,260.27, from December 1, 2015 through November 30, 2016 appellant received an overpayment in the amount of \$14,719.23, from December 1, 2016 through November 30, 2017 appellant received an overpayment in the amount of \$14,722.34, from December 1, 2017 through November 30, 2018 appellant received an overpayment in the amount of \$15,015.94, and from December 1, 2018 through May 25, 2019 appellant received an overpayment in the amount of \$7,443.06. The total overpayment was \$69,656.44.

On June 3, 2019 OWCP issued a preliminary determination that appellant received an overpayment of compensation benefits in the amount of \$69,656.44 for the period September 1,

2014 through May 25, 2019 because the SSA/FERS offset was not applied to FECA compensation payments for that period. It determined that she was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment action request and overpayment recovery questionnaire (Form OWCP-20) to determine a fair repayment method, and advised her that she could request a waiver of recovery of the overpayment. It requested that she provide copies of supporting financial documentation including income tax returns, bank account statements, bills, pay slips, and any other records. OWCP advised appellant that it would deny waiver of recovery of the overpayment if she failed to furnish the requested financial information within 30 days. It further notified her that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.³

On a completed Form OWCP-20 dated June 19, 2019, appellant listed total monthly income in the amount of \$4,163.06 (\$1,357.00 in SSA benefits and \$2,806.08 in other benefits including FECA compensation benefits). She also reported total monthly expenses in the amount of \$2,132.00 (\$500.00 for food, \$300.00 for clothing, \$126.63 for electricity, \$26.21 for gas, \$96.23 for telephone, \$135.18 for Dishnet, \$332.78 for insurance premiums, and \$691.18 for various miscellaneous monthly installment payments). The total value of appellant's assets was listed as \$16,773.80 (\$229.86 in a checking account, \$62.50 in a savings account, and \$16,431.44 in a Thrift Savings Plan account). Appellant attached supporting financial documentation regarding her income and expenses. Appellant asserted that repayment should not be required because the overpayment was not her fault.

By decision dated August 5, 2019, OWCP finalized its preliminary determination that appellant had received an overpayment of compensation in the amount of \$69,656.44 because the SSA/FERS offset had not been applied to FECA compensation payments for the period September 1, 2014 through May 25, 2019. It found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because her monthly income of \$3,030.69 exceeded her monthly expenses of \$2,208.21 by more than \$50.00. OWCP concluded that there was no evidence to conclude that recovery of the overpayment would either defeat the purpose of FECA or be against equity and good conscience. It indicated that the overpayment would be recovered by withholding \$200.00 from her continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of his or her federal employment.⁴ Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or

³ In a letter dated June 10, 2019, OWCP notified appellant that, based on information provided by SSA regarding the amount of her age-related retirement benefits attributable to federal service, her FECA wage-loss compensation had been adjusted.

⁴ *Supra* note 1 at § 8102(a).

remuneration of any type from the United States.⁵ When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.⁶

Section 10.421(d) of OWCP's implementing regulations requires that it reduce the amount of compensation by the amount of any SSA age-related benefits that are attributable to federal service of the employee.⁷ FECA Bulletin No. 97-09 provides that FECA benefits must be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$69,656.44, for which she was without fault, because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits for the period September 1, 2014 through May 25, 2019 without appropriate offset.

The record indicates that, while appellant was receiving compensation for disability under FECA, she was also receiving SSA age-related retirement benefits during the period at issue. A claimant cannot receive both FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.⁹ Consequently, the fact of the overpayment has been established.

OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. SSA provided the SSA rates with FERS and without FERS for specific periods commencing September 1, 2014 through May 25, 2019. OWCP provided its calculations for each relevant period based on the SSA worksheet and in its June 3, 2019 preliminary overpayment determination. Appellant did not challenge the fact or amount of overpayment and no contrary evidence was provided.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period September 1, 2014 through May 25, 2019 and finds that an overpayment of compensation in the amount of \$69,656.44 was created.¹⁰

⁵ *Id.* at § 8116.

⁶ *Id.* at § 8129(a).

⁷ 20 C.F.R. § 10.421(d); *see R.R.*, Docket No. 19-0104 (issued March 9, 2020); *T.B.*, Docket No. 18-1449 (issued March 19, 2019); *L.J.*, 59 ECAB 264 (2007).

⁸ FECA Bulletin No. 97-09 (February 3, 1997).

⁹ *See C.B.*, Docket No. 20-0031 (issued July 27, 2020); *D.C.*, Docket No. 19-0118 (issued January 15, 2020).

¹⁰ *See C.B.*, *id.*; *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *L.L.*, Docket No. 18-1103 (issued March 5, 2019); *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

LEGAL PRECEDENT -- ISSUE 2

The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.¹¹ These statutory guidelines are found in section 8129(b) of FECA which provide: "Adjustment or recovery [of an overpayment] by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience."¹² If OWCP finds a claimant to be without fault in the matter of an overpayment, then, in accordance with section 8129(b), OWCP may only recover the overpayment if it determined that recovery of the overpayment would neither defeat the purpose of FECA, nor be against equity and good conscience.¹³

According to 20 C.F.R. § 10.436, recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his or her income (including compensation benefits) to meet current ordinary and necessary living expenses, and also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.¹⁴ According to 20 C.F.R. § 10.437, recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.¹⁵ To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable, that it cannot be regained, and that the action was based chiefly or solely in reliance on the payments or on the notice of payment.¹⁶

OWCP's regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.¹⁷

¹¹ See *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *P.J.*, Docket No. 18-0248 (issued August 14, 2018); *Robert Atchison*, 41 ECAB 83 (1989).

¹² 5 U.S.C. § 8129(b).

¹³ See *L.D.*, *supra* note 11; *P.J.*, *supra* note 11.

¹⁴ 20 C.F.R. § 10.436. An individual is deemed to need substantially all of her monthly income to meet current and ordinary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. Assets must not exceed a resource base of \$6,200.00 for an individual with no eligible dependents or \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4(a)(2) (September 2018).

¹⁵ *Id.* at § 10.437(a), (b).

¹⁶ *Id.* at § 10.437(b)(1).

¹⁷ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁸ Appellant has not established that recovery of the overpayment would defeat the purpose of FECA because she has not shown that she needs substantially all of her current income to meet ordinary and necessary living expenses. OWCP reviewed her overpayment recovery questionnaire and found that appellant's current income of \$3,030.69 exceeded her current ordinary and necessary living expenses of \$2,208.21 by more than \$50.00. Thus, it found that appellant has not shown that she needs substantially all of her current income to meet current ordinary and necessary living expenses.¹⁹ Because she has not met the first prong of the two-prong test of whether recovery of the overpayment would defeat the purpose of FECA, it is not necessary for OWCP to consider whether her assets do not exceed the allowable resource base.

Appellant also has not established that recovery of the overpayment would be against equity and good conscience because she has not shown, for the reasons noted above, that she would experience severe financial hardship in attempting to repay the debt or that she relinquished a valuable right or changed her position for the worse in reliance on the payment which created the overpayment.²⁰

Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP properly denied waiver of recovery of the overpayment.

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations²¹ provides that, when an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as the error is discovered or his or her attention is called to the same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.²²

¹⁸ *Id.* at § 10.436.

¹⁹ *See supra* note 14.

²⁰ *See L.D., supra* note 11; *P.J., supra* note 11; *William J. Murphy*, 41 ECAB 569 (1989).

²¹ 20 C.F.R. § 10.441(a).

²² *Id.*; *see C.M.*, Docket No. 19-1451 (issued March 4, 2020).

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$200.00 from appellant's continuing compensation payments every 28 days.

OWCP took into consideration appellant's submitted financial information as well as the factors set forth in 20 C.F.R. § 10.441 and found that this method of recovery would minimize any resulting hardship on her. Therefore, it properly required recovery of the overpayment by deducting \$200.00 from her continuing compensation payments every 28 days.

CONCLUSION

The Board finds that OWCP properly found that appellant received an overpayment of compensation in the amount of \$69,656.44 for which she was not at fault, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits for the period September 1, 2014 through May 25, 2019 without appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$200.00 every 28 days from her continuing compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the August 5, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 11, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board